IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERARD WOGMAN,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
	:	NO. 98-CV-2539
TEAMSTERS HEALTH AND WELFARE FUND OF PHILADELPHIA AND VICINITY,	:	
Defendant.	:	

McGlynn, J. August , 1998

MEMORANDUM OF DECISION

This action arises from a complaint that Plaintiff Gerard Wogman ("Mr. Wogman") originally filed in Philadelphia Municipal Court, claiming breach of contract by Defendant Teamsters Health and Welfare Fund of Philadelphia and Vicinity ("Defendant") for wrongfully withholding medical benefits. Defendant removed the action to this court on May 15, 1998, contending that Mr. Wogman's claim arises under section 502(a)(1)(B) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B).[1] Presently before the court is Defendant's Motion to Dismiss or, in the alternative, Motion for Summary Judgment.

[1] Section 502(a)(1)(B) states that a participant or beneficiary in a plan may bring a civil action "to recover benefits due to him under the terms of the plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Mr. Wogman does not contest removal of this action.

For the reasons set forth below, Defendant's Motion for Summary Judgment will be granted.

I. BACKGROUND

The factual allegations in this case are essentially undisputed. Mr. Wogman was a participant in the Defendant benefit plan which provides medical benefits to its participants and beneficiaries. After injuring his wrist at work in 1992, Mr. Wogman applied for medical benefits from Defendant. In November of 1997, Defendant advised Mr. Wogman's physician, Dr. Jonathon Levyn, that Mr. Wogman's claim for benefits had been denied and that Mr. Wogman had been informed of the reasons for this denial. Pl's Mem. of Law, at Exh. A. On January 14, 1998, Mr. Wogman requested review of this denial.

On February 10, 1998, William J. Einhorn ("Mr. Einhorn"), administrator of Defendant, placed Mr. Wogman's matter in abeyance until certain medical notes regarding Mr. Wogman's treatment were forwarded to him. Df's Reply Brief in Response to Pl's Opp'n to Df's Mot., at Exh. 4. Counsel for Mr. Wogman forwarded these documents on February 11, 1998. Pl's Mem. of Law, at Exh. B. On March 25, 1998, counsel for Mr. Wogman requested the status of Mr. Wogman's claim, alleging that he would assume it had been denied if Defendant had not responded within fourteen days. Id. at Exh. D. On April 17, 1998, Mr. Wogman filed suit in state court. On May 15, 1998, Defendant removed the action to this court. On June 25, 1998, Defendant's Claims Review Committee denied Mr. Wogman's claim for

reimbursement.

II. DISCUSSION

A. Standard of Review

A motion to dismiss relying on matters outside the pleadings may be treated as a motion for summary judgment under Rule 56, provided all parties have had an opportunity to present all pertinent material. Fed. R. Civ. P. 12(b). With respect to this action, however, the court does not need to consider whether it is permissible to go beyond the pleadings to reach the substance of Defendant's Rule 12(b)(6) motion, since Defendant has, in the alternative, requested summary judgment.

The court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The movant bears the initial burden of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party must then demonstrate the existence of a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

In the present case, Defendant seeks either dismissal of the complaint or summary judgment. Defendant refers to matters beyond the pleadings, including the benefit plan and correspondence transmitted between the parties. Mr. Wogman's

response to Defendant's motion addressed these matters. Therefore, Mr. Wogman has had appropriate notice and opportunity to respond to a motion for summary judgment. Thus, the court will proceed under Rule 56(c) and will consider the entire record in ruling on Defendant's motion.

B. Exhaustion of Administrative Remedies

Mr. Wogman claims he was entitled to file suit because the letters denying payment for Dr. Levyn's treatment of Mr. Wogman did not specify why the claim had been denied. Under the plan, Defendant is required to provide a written explanation why a claim is denied.[2] Defendant, however, contends that it was not required to issue a formal denial as a prerequisite to Mr. Wogman exhausting the internal plan procedures before seeking judicial intervention. Instead, Mr. Wogman was obligated to exhaust the plan's administrative procedure even if Defendant did not follow the procedure.

Maintenance of an ERISA claim requires exhaustion of administrative remedies by the claimant. Berger v. Edgewater Steel Co., 911 F.2d 911, 916 (3d Cir. 1990), cert. denied, 499 U.S. 920 (1991); Weldon v. Kraft, Inc., 896 F.2d 793 (3d Cir. 1990); Wolf v. National Shopmen Pension Fund, 728 F.2d 182, 185 (3d Cir. 1984). A claimant is excused from exhaustion if: (1) threatened with irreparable harm; (2) denied meaningful access to

[2] Defendant plan states: "[i]f your claim for a benefit under this Plan is denied in whole or in part you must receive a written explanation of the reason for the denial." Df's Reply Brief in Response to Pl's Opp'n to Df's Mot., at Exh. 2.

the plan's administrative procedures; or (3) exhaustion would be futile. See, e.g., Berger, 911 F.2d at 916 (finding exhaustion not required when futile); Kimble v. International Bhd. of Teamsters, 826 F. Supp. 945, 947 (E.D. Pa. 1993)(futility exception triggered when plaintiffs "show that it is certain that their claim will be denied on appeal, not merely that they doubt an appeal will change the decision"); Tomczyscyn v. Teamsters, Local 115 Health and Welfare Fund, 590 F. Supp. 211, 216 (E.D. Pa. 1984)(same); Lucas v. Warner & Swasey Co., 475 F. Supp. 1071, 1074 (E.D. Pa. 1979)(excusing claimant from exhaustion if threatened with irreparable harm or denied meaningful access to plan's administrative procedures).

Under the Defendant plan, a claimant may appeal an adverse determination to the plan administrator within ninety days of receiving notice of denial of benefits. See Df's Reply Brief in Response to Pl's Opp'n to Df's Mot., at Exh. 2. It is undisputed that Mr. Wogman properly requested review of his claim on January 14, 1998. Upon this request, Defendant's Review Committee was to "issue a decision not later that sixty (60) days (after all necessary information is received by the committee) reaffirming, modifying or setting aside the former action." Id. On February 10, 1998, Mr. Wogman's claim was placed in abeyance until Defendant received Mr. Wogman's medical records. According to counsel for Mr. Wogman, the requested information was forwarded on February 11, 1998. Therefore, upon receipt of this information, Defendant had sixty (60) days to issue its decision.

However, even if Defendant did not issue a decision within this time period, Mr. Wogman was required to proceed with the administrative process rather than file suit.

Significantly, the exhaustion requirement is "strictly enforced" unless proceeding with the administrative remedies triggers one of its exceptions. See Berger, 911 F.2d at 916. Mr. Wogman alleges that appealing this denial would be futile because Defendant is denying that Mr. Wogman is covered under the plan. Pl's Answer to Reply Brief, at unnumbered 2. This argument is without merit.

On June 25, 1998, Mr. Einhorn informed Mr. Wogman that his benefits claim was denied because: (1) Mr. Wogman did not amass sufficient work time to be eligible to receive the benefits; (2) the treatment Mr. Wogman received was for a work-related injury excluded from coverage pursuant to Exclusion 1 of the plan; and (3) the Utilization Review Committee determined that Mr. Wogman's treatment was not medically necessary or required pursuant to Exclusion 2 of the plan. Df's Reply Brief in Response to Pl's Opp'n to Df's Mot., at Exh. 3. In addition, the letter informed Mr. Wogman that "further appeal to the Hearing Panel of the Fund's Board of Trustees must be submitted to the Fund in writing, within sixty (60) of the date of this letter, giving the reasons for the appeal . . . . " Id. In Tomczyscyn, the court held that the employer's denial letter did not sufficiently suggest that the trustees would deny further appeal. 590 F. Supp. at 216. Likewise, Mr. Einhorn's letter does not establish

clearly and positively that an appeal would have been useless. See Kimble, 826 F. Supp. at 947 (plaintiffs “must show that it is certain that their claim will be denied on appeal, not merely that they doubt an appeal will change the decision”); Brown v. Continental Baking Co., 891 F. Supp. 238, 241 (E.D. Pa. 1995) (“In order to merit waiver of the exhaustion requirement a claimant must provide not merely bare allegations of futility, but a clear and positive showing of futility.") (citation and internal quotation marks omitted). Consequently, Mr. Wogman was required to exhaust his administrative remedies before filing this suit. Because he failed to do so, his claim will be dismissed.

An appropriate order follows.

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O R D E R

AND NOW, this day of AUGUST, 1998, upon consideration of the Defendant's Motion to Dismiss or, in the alternative, Motion for Summary Judgment, and the Plaintiff's response thereto, it is hereby

O R D E R E D

that Defendant's Motion for Summary Judgement is **GRANTED** and Plaintiff's claim is dismissed for failing to exhaust his administrative remedies.

BY THE COURT:

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JOSEPH L. McGLYNN, JR. J.